



U.S. Department
of Transportation
**Federal Aviation
Administration**

800 Independence Ave., S.W.
Washington, D.C. 20591

July 31, 2007

Exemption No. 9435
Regulatory Docket No. FAA-2007-28516

Mr. Charles F. Chapas
126 Derwent Drive
Pittsburgh, PA 15237

Dear Mr. Chapas:

This letter is to inform you that we are denying your petition for exemption from the Age 60 Rule. This letter explains the basis of our decision and transmits it to you.

The Basis for our Decision

On June 8, 2007, you petitioned the Federal Aviation Administration (FAA) for an exemption from § 121.383 (c) of Title 14, Code of Federal Regulations (14 CFR), commonly referred to as the Age 60 Rule, to the extent necessary to permit you to act as a pilot in operations conducted under part 121 after reaching your 60th birthday.

Under the authority of 49 U.S.C. § 44701(f), the FAA, in its discretion, may grant an exemption from the requirements of a regulation if it finds that such an exemption is in the public interest. The petitioner has the burden of showing that an exemption is justified and in the public interest.

On September 28, 2006, the FAA established an Aviation Rulemaking Committee (ARC) to make recommendations on whether the FAA should change the existing Age 60 Rule so that the United States would be consistent with a pending change to the International Civil Aviation Organization (ICAO) standard. The ARC submitted its report on November 29, 2006. The report is available to the public through the Docket Management System at <http://dms.dot.gov> at any time or you can go to the Docket Management Facility in Room W12-140 of the West Building Ground Floor at 1200 New Jersey Avenue, S.E., Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays (Reference Docket No. 26139). The report is document number 5785 and a separate document that contains appendices to the report is document number 5786 in that docket. The ARC did not reach a consensus on whether the FAA should adopt the new ICAO standard, but it did recommend that any future change should be prospective.

On November 23, 2006, ICAO revised the upper age limit in the Standards and Recommended Practices to Annex 1—Personnel Licensing as follows:

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2.1.10.1: A Contracting State, having issued pilot licenses, shall not permit the holders thereof to act as pilot-in-command of an aircraft engaged in international commercial air transport operations if the license holders have attained their 60th birthday or, in the case of operations with more than one pilot, where the other pilot is younger than 60 years of age, their 65th birthday.

2.1.10.2: **Recommendation.** A Contracting State, having issued pilot licenses, should not permit the holders thereof to act as co-pilot of an aircraft engaged in international commercial air transport operations if the license holders have attained their 65th birthday.

The ICAO standard and recommendation do not require the FAA to change its existing regulations. However, the FAA has decided to move forward with the rulemaking initiative and is currently developing a proposal (a notice of proposed rulemaking) to revise the Age 60 Rule in response to the new ICAO standard. The FAA recognizes that those persons approaching age 60 are, in general, experienced pilots. Thus, a general expansion of the current age limit may be appropriate. That proposal will be subject to public notice and comment, as required by the Administrative Procedure Act. However, the FAA has not yet changed the rule, and there is still an age limit of 60 for pilots serving in part 121 operations.

While we are sympathetic to the individual circumstances of pilots such as yourself who have applied for an exemption while the rulemaking process is ongoing, the FAA simply cannot overturn more than 40 years of precedent in this area without a deliberative process. To do so would circumvent the public notice and comment requirements of the Administrative Procedure Act and appear to presuppose the outcome of our proposal. You have not shown that the public interest warrants relief for individual pilots. This situation is more appropriately addressed via general rulemaking for a class of individuals than via an individual exemption. Please be assured that we are moving as quickly as possible with this rulemaking.

The FAA's Decision:

In consideration of the foregoing, I find that a grant of exemption would not be in the public interest. Therefore, pursuant to the authority contained in 49 U.S.C. §§ 40113 and 44701 delegated to me by the Administrator, your petition for an exemption from 14 CFR § 121.383(c) is hereby denied.

Sincerely,

/s/
James J. Ballough
Director, Flight Standards Service